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9 Chapter 7 Trustee

10 **UNITED STATES BANKRUPTCY COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**
12 **SACRAMENTO DIVISION**

13 In re:

14 ERNESTO DIAZ,

15 Debtor.

Case No. 07-28426-C-7
Chapter 7

DCN: DNL-15

Date: January 27, 2010
Time: 9:30 a.m.
Place: Dept. C, Courtroom 35
501 I Street, 6th Floor
Sacramento, CA. 95814

16 **MOTION TO APPROVE SALE OF 1026 BENICIA ROAD**

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19 RICHARD J. HANF ("Trustee") hereby moves for authority to sell the real property
20 consisting of approximately .516 acre, including a two bedroom-one bathroom residence that has
21 sustained significant fire damage, at 1026 Benicia Road, Vallejo, Solano County AP#0071-250-310,
22 California ("1026 Benicia Road"), to Karmel Toor and Gurmit Toor (hereinafter collectively
23 "Buyers") for \$87,500, subject to bankruptcy court approval and over-bidding at the hearing on this
24 motion. The sale will be free and clear of the following liens, encumbrances, and claims of interest
25 pursuant to 11 U.S.C. Section 363(f)(3):

26 Claimant
Internal Revenue Service

27 Description
Pre-petition tax lien paid down post-petition to the
28 approximate sum of \$245,306.59 through June 24,
2009, including interest and penalties. As with prior
asset sales in this case, Trustee will obtain claimant

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1 consent by approval of the form of the order granting
2 this motion.

3 Foley, McIntosh, Frey & Claytor

Pre-petition abstract of judgment paid down pre-
petition to \$13,608.45 through May 29, 2009,
including post-petition interest. The claim is the
subject of a bonafide dispute in Adversary Proceeding
No. 09-02522, in which Trustee seeks relief under 11
U.S.C. Sections 547 and 502(d).

6 Trustee will also apply for allowance to Ethos Real Estate of a 5% commission as a Chapter
7 7 administrative expense and authorizing Trustee to pay same from escrow, along with the
8 undisputed real property taxes, assessments and utilities, estimated to be about \$12,000. In support
9 thereof, Trustee respectfully represents that:

10 1. This case was commenced by the filing of a voluntary Chapter 11 petition on
11 October 10, 2007 by the debtor and converted to Chapter 7 for cause on October 14, 2008.

12 2. On August 12, 2008, Trustee was appointed as trustee for the above-captioned
13 bankruptcy estate.

14 3. Among the assets of the estate is 1026 Benicia Road, subject to the claims of lien
15 described above.

16 4. On August 12, 2009, the bankruptcy court granted RJH-17, Trustee's application for
17 authority to employ Ethos Real Estate, a real estate broker whose employment by the debtor had
18 been approved in February 2008, to list and sell 1026 Benicia Road for a commission of 5% of
19 the gross sale price.

20 5. Trustee and Buyers, by and through the efforts of Ethos Real Estate, have entered
21 into a purchase and sale agreement, including 2 addenda, the terms of which includes: (a) Buyers
22 shall accept 1026 Benicia Road in "as-is" condition; (b) Buyers have tendered a \$20,000 deposit
23 non-refundable in all events except if Buyers are overbid; (c) Buyers shall pay an additional
24 \$30,000 at close of escrow; (d) Trustee shall carry back an interest-only note secured by a first
25 trust deed against 1026 Benicia Road for \$37,500 for a period of no more than 3 months at an
26 annual interest rate of 5%; and (e) Trustee shall pay all liens against 1026 Benicia Road. Those
27 terms are the product of extended negotiations between Trustee and Buyers.

28 6. Approving the sale is in the best interests of the estate because: (a) the residence

1 located at 1026 Benicia Road has sustained extensive fire damage and there is a continuing risk
2 associated with owning fire-damaged real property; (b) 1026 Benicia Road has been exposed to
3 the market for nearly 2 years with the assistance of a real estate professional,

4 WHEREFORE, Trustee prays for an order: (a) approving the sale pursuant to the terms of
5 the purchase and sale agreement, and free and clear of the liens, encumbrances, and claims of
6 interest of Internal Revenue Service and Foley, McIntosh, Frey & Claytor; (b) allowing Ethos
7 Real Estate a 5% commission as a Chapter 7 administrative expense and authorizing Trustee to
8 pay same from escrow, along with the undisputed real property taxes, assessments and utilities;
9 (c) authorizing Trustee to take all steps necessary to complete the transaction; and (d) such other
10 and further relief as is necessary and proper.

11 DATED: December 30 2009

DESMOND, NOLAN, LIVAICH & CUNNINGHAM

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13 By: 

J. RUSSELL CUNNINGHAM

Attorney for Richard J. Hanf

Chapter 7 Trustee

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